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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 MARGARET ELIZABETH JACOBY,
a.k.a. MARGARET ELIZABETH COUTS
14 8152 Sunset Avenue
Fair Oaks, CA 95628

15 Registered Nurse License No. 245687

16 Respondent.

Case No. 2009-245

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about August 31, 1974, the Board issued Registered Nurse License
24 Number 245687 to Margaret Elizabeth Jacoby, also known as Margaret Elizabeth Coutts
25 ("Respondent"). Respondent's registered nurse license was in full force and effect at all times
26 relevant to the charges brought herein and will expire on May 31, 2010, unless renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

....

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

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7. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

8. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

9. Health and Safety Code section 11173 states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCE AT ISSUE

11. "Dilaudid", a brand of hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

FIRST CAUSE FOR DISCIPLINE

(Diversion, Possession, and Self-Administration of Controlled Substances)

12. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that in or about January and February 2005, while employed and on duty

1 as a registered nurse in the Imaging Department at Mercy San Juan Medical Center, Carmichael,
2 California, Respondent did the following:

3 **Diversion of Controlled Substances:**

4 a. Respondent obtained the controlled substance Dilaudid by fraud, deceit,
5 misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173,
6 subdivision (a), as follows: During the time periods indicated above, Respondent removed
7 various quantities of Dilaudid from the Medical Center supply for her own personal use under the
8 names of Patients A through C and H through J when, in fact, there were no physician's orders
9 authorizing the medication for the patients. Respondent then falsified the Narcotic Control
10 Record and/or Imaging Special Procedure Records to conceal her diversion of the Dilaudid, as
11 set forth in paragraph 14 below. After diverting the Dilaudid, Respondent took the medication
12 into the bathroom and injected it into her thigh while on duty. In or about February 2005,
13 Respondent entered a detoxification program for ten days.

14 **Possession of Controlled Substances:**

15 b. During the time periods indicated above, Respondent possessed unknown
16 quantities of the controlled substance Dilaudid without a valid prescription from a physician,
17 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section
18 4060.

19 **Self-Administration of Controlled Substances:**

20 c. During the time periods indicated above, Respondent self-administered
21 unknown quantities of the controlled substance Dilaudid without lawful authority therefor.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Use of Controlled Substances to an Extent or in a Manner**

24 **Dangerous or Injurious to Oneself or Others)**

25 13. Respondent is subject to disciplinary action pursuant to Code section
26 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
27 2762, subdivision (b), in that in or about January and February 2005, while employed and on
28 duty as a registered nurse in the Imaging Department at Mercy San Juan Medical Center,

1 Carmichael, California, Respondent used the controlled substance Dilaudid to an extent or in a
2 manner dangerous or injurious to herself and/or others, as set forth in subparagraph 12 (a) above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(False Entries in Hospital/Patient Records)**

5 14. Respondent is subject to disciplinary action pursuant to Code section
6 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
7 2762, subdivision (e), in that in or about January and February 2005, while employed and on duty
8 as a registered nurse in the Imaging Department at Mercy San Juan Medical Center, Carmichael,
9 California, Respondent falsified or made grossly incorrect, grossly inconsistent, or unintelligible
10 entries in the Medical Center's records pertaining to the controlled substance Dilaudid, as
11 follows:

12 **Patient A:**

13 a. On February 14, 2005, Respondent wrote an order for Dilaudid 2 mg for
14 Patient A in the Physicians Orders section of the Inpatient Procedural Sedation Record when, in
15 fact, the patient's physician had not ordered the medication for the patient. Further, Respondent
16 charted on the Narcotic Control Record that she administered Dilaudid 2 mg to the patient at
17 0915 hours when, in fact, Respondent did not administer any Dilaudid to the patient. In addition,
18 Respondent failed to chart the administration or wastage of the Dilaudid on the Imaging Special
19 Procedure Record or otherwise account for the disposition of the Dilaudid 2 mg.

20 **Patient B:**

21 b. On February 14, 2005, at 1300 hours, Respondent signed out on the
22 Narcotic Control Record Dilaudid 2 mg for Patient B when, in fact, there was no physician's
23 order authorizing the medication for the patient. Further, Respondent charted on the Narcotic
24 Control Record that she administered Dilaudid 0.5 mg to the patient at 1300 hours and wasted
25 the remaining 1.5 mg Dilaudid, and charted on the Imaging Special Procedure Record that she
26 administered 0.5 mg Diluadid to the patient at 1249 hours by IV. In fact, Respondent did not
27 administer any Dilaudid to the patient.

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1 **Patient C:**

2 c. On February 14, 2005, at 1130 hours, Respondent signed out on the
3 Narcotic Control Record a total of 4 mg Dilaudid for Patient C when, in fact, there was no
4 physician's order authorizing the medication for the patient. Further, Respondent charted on the
5 Narcotic Control Record that she administered Dilaudid 3 mg to the patient at 1130 hours and
6 wasted the remaining 1 mg Dilaudid, when, in fact, Respondent did not administer any Dilaudid
7 to the patient. In addition, Respondent failed to chart the administration or wastage of the
8 Dilaudid on the Imaging Special Procedure Record or otherwise account for the disposition of
9 the Dilaudid 4 mg.

10 **Patient H:**

11 d. On January 27, 2005, at 1215 hours, Respondent signed out on the
12 Narcotic Control Record Dilaudid 2 mg for Patient H when, in fact, there was no physician's
13 order authorizing the medication for the patient. Further, Respondent charted on the Narcotic
14 Control Record that she administered Dilaudid 1 mg to the patient at 1215 hours and wasted the
15 remaining 1 mg Dilaudid, but failed to chart the administration or wastage of the Dilaudid on the
16 Imaging Special Procedure Record or otherwise account for the disposition of the Dilaudid 2 mg.

17 **Patient I:**

18 e. On January 31, 2005, at 1345 hours, Respondent signed out on the
19 Narcotic Control Record Dilaudid 2 mg for Patient I when, in fact, there was no physician's order
20 authorizing the medication for the patient. Further, Respondent charted on the Narcotic Control
21 Record that she administered Dilaudid 2 mg to the patient at 1345 hours, but failed to chart the
22 administration or wastage of the Dilaudid on the Imaging Special Procedure Record or otherwise
23 account for the disposition of the Dilaudid 2 mg.

24 **Patient J:**

25 f. On January 26, 2005, at 1100 hours, Respondent signed out on the
26 Narcotic Control Record Dilaudid 2 mg for Patient J when, in fact, there was no physician's
27 order authorizing the medication for the patient. Further, Respondent charted on the Narcotic
28 Control Record that she administered Dilaudid .50 mg to the patient at 1100 hours and wasted


1 the remaining 1.50 mg Dilaudid, but failed to chart the administration or wastage of the Dilaudid
2 on the Imaging Special Procedure Record or otherwise account for the disposition of the
3 Dilaudid 2 mg.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 7 1. Revoking or suspending Registered Nurse License Number 245687, issued
8 to Margaret Elizabeth Jacoby, also known as Margaret Elizabeth Coutts;
9 2. Ordering Margaret Elizabeth Jacoby, also known as Margaret Elizabeth
10 Coutts, to pay the Board of Registered Nursing the reasonable costs of the investigation and
11 enforcement of this case, pursuant to Business and Professions Code section 125.3;
12 3. Taking such other and further action as deemed necessary and proper.

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14 DATED: 4/14/09

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16 
17 RUTH ANN TERRY, M.P.H., R.N.
18 Executive Officer
19 Board of Registered Nursing
20 Department of Consumer Affairs
21 State of California

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28 Complainant